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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Hamid Ould-Brahim

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EXAMINER

ABRISHAMKAR, KAVEH

ART UNIT

PAPER NUMBER

2131

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/902,683

Applicant(s)

OULD-BRAHIM ET AL.

Examiner

Kaveh Abrishamkar

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. This action is in response to the communication filed on December 9, 2005.

Claims 1-21 are currently being considered.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 10-18 are rejected under 35 U.S.C. 101 because they are directed solely to a "data format" containing various data fields. This is non-functional descriptive material, as neither the data format nor the data fields that it contains perform any specific data manipulation, or effect any functional change in a computing process. See MPEP 2016.IV.B.1. Though, the update message is now "embodied in a transmission medium" it does not constitute functional descriptive material because it does not exhibit any functional interrelationship with the way computing processes are performed, but just comprises a format of a message.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rekhter et al. (U.S. Patent No. 6,526,056).

Regarding claim 1, Rosen discloses:

A Border Gateway Protocol Speaker (BGP Speaker) (column 9, lines 54-60, column 12, lines 35-55, column 13, lines 5-18, column 14, lines 36-42), in a communication system which implements at least one network based Virtual Private Network (NB-VPN) across a backbone (column 3, lines 7-14, column 9, lines 44-60, column 18, lines 43-49), the at least one NB-VPN using an Open System Interconnect (OSI) layer-2 protocol and an OSI layer-3 protocol (column 2, lines 16-28), at least one NB-VPN using an OSI layer-2 protocol different from an OSI layer-2 protocol used by the backbone or using an OSI layer-3 protocol different from an OSI layer-3 protocol used by the backbone (column 7, lines 38-65, column 9, lines 44-60, column 11, lines 23-33, column 15, lines 45-65, column 19, lines 31-59, column 21, lines 45-54) the BGP speaker transmitting an Update message (column 13, 5-19, column 17, lines 35-43) being in conformance with a Border Gateway Protocol (BGP), and the Update message further including:

Virtual Private Network (VPN) Membership information (column 19, lines 45-50);
and
VPN Reachability information (column 20, lines 1-9).

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Rekhter does not explicitly disclose that the update message further comprises: a VPN reachability mode field, and Tunnel Mechanism information. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The transmitting the update message would have been performed regardless of the different data fields delineated above. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit an update message containing any type of data fields, because defining such data fields does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Claim 2 is rejected as applied above in rejecting claim 1. Furthermore, Rekhter does not explicitly disclose that the VPN membership information includes at least one VPN Identification (VPN-ID) field and a number of VPN-IDs field. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The transmitting the update message would have been performed regardless of the different data fields delineated above. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see

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In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit an update message containing any type of data fields, because defining such data fields does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

Claim 3 is rejected as applied above in rejecting claim 1. Furthermore, Rekhter does not explicitly disclose that the VPN Reachability information includes zero or more VPN Reachability entries. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The transmitting the update message would have been performed regardless of the different data fields delineated above. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit an update message containing any type of data fields, because defining such data fields does not functionally relate to the steps in the method claimed and because the subjective interpretation

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Claim 4 is rejected as applied above in rejecting claim 3. Rekhter does not explicitly disclose that the VPN Reachability entry includes a VPN reachability type field, a length field, and a VPN reachability value field. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The transmitting the update message would have been performed regardless of the different data fields delineated above. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit an update message containing any type of data fields, because defining such data fields does not functionally relate to the steps in the method claimed and because the subjective interpretation

Claim 5 is rejected as applied above in rejecting claim 1. Rekhter does not explicitly disclose that the Tunnel Mechanism information includes zero or more VPN Tunnel entries. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The transmitting the update message would have been performed regardless of the different data fields delineated above. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381,

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1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit an update message containing any type of data fields, because defining such data fields does not functionally relate to the steps in the method claimed and because the subjective interpretation

Claim 6 is rejected as applied above in rejecting claim 5. Rekhter does not explicitly disclose that the VPN Tunnel Entry includes a Tunnel Type field, a Length field and a Tunnel Value field. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The transmitting the update message would have been performed regardless of the different data fields delineated above. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit an update message containing any type of data fields, because defining such data fields does not functionally relate to the steps in the method claimed and because the subjective interpretation

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Claim 7 is rejected as applied above in rejecting claim 1. Rekhter does not explicitly disclose that the Update message includes a unique Subsequent Address Family Identifier (SAFI) value indicating that the updating message includes a VPN membership information, VPN reachability information, and Tunnel Mechanism information. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The transmitting the update message would have been performed regardless of the different data fields delineated above. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit an update message containing any type of data fields, because defining such data fields does not functionally relate to the steps in the method claimed and because the subjective interpretation

Claim 8 is rejected as applied above in rejecting claim 7. Rekhter does not explicitly disclose that the unique SAFI value is 129. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The transmitting the update message would have been performed regardless of the different data fields delineated above. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re*

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Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit an update message containing any type of data fields, because defining such data fields does not functionally relate to the steps in the method claimed and because the subjective interpretation

Claim 9 is rejected as applied above in rejecting claim 1. Rekhter does not explicitly disclose that the Update message includes a field indicating the topology of a NB-VPN. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The transmitting the update message would have been performed regardless of the different data fields delineated above.

Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit an update message containing any type of data fields, because defining such data fields does not functionally relate to the steps in the method claimed and because the subjective interpretation

Regarding claim 19, Rekhter discloses:

A Virtual Router (VR) (column 3 , lines 44-64), in a communication system which implements at least one network based Virtual Private Network (NB-VPN) across a backbone (column 3, lines 7-14, column 9, lines 44-60, column 18, lines 43-49), the at least one NB-VPN using an Open System Interconnect (OSI) layer-2 protocol and an OSI layer-3 protocol (column 2, lines 16-28), at least one NB-VPN using an OSI layer-2 protocol different from an OSI layer-2 protocol used by the backbone or using an OSI layer-3 protocol different from an OSI layer-3 protocol used by the backbone (column 7, lines 38-65, column 9, lines 44-60, column 11, lines 23-33, column 15, lines 45-65, column 19, lines 31-59, column 21, lines 45-54) the BGP speaker transmitting an Update message (column 13, 5-19, column 17, lines 35-43) being in conformance with a Border Gateway Protocol (BGP), the Update message further including information relating to a NB-VPN to which the VR belongs (column 19, lines 45-50), and the VR including instructions for establishing an OSI-layer 2 connection to at least one other VR in the communication system (column 3, lines 53-63).

Rekhter does not explicitly disclose that the update message further includes information relating to networking systems used by the NB-VPN to which the VR belongs. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The transmitting the update message would have been performed regardless of the different data fields delineated above. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381,

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1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit an update message containing any type of data fields, because defining such data fields does not functionally relate to the steps in the method claimed and because the subjective interpretation

Claim 20 is rejected as applied above in rejecting claim 19. Rekhter does not explicitly disclose that the Update message includes a unique Subsequent Address Family Identifier (SAFI) value indicating that the updating message includes a VPN membership information, VPN reachability information, and Tunnel Mechanism information. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The transmitting the update message would have been performed regardless of the different data fields delineated above. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit an update message containing any type of data fields, because defining such data fields does not functionally relate to the steps in the method claimed and because the subjective interpretation

Claim 21 is rejected as applied above in rejecting claim 7. Rekhter does not explicitly disclose that the unique SAFI value is 129. However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The transmitting the update message would have been performed regardless of the different data fields delineated above. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit an update message containing any type of data fields, because defining such data fields does not functionally relate to the steps in the method claimed and because the subjective interpretation

5. Claims 10-18 are claims directed to a "data format" analogous to the BGP Speaker claims rejected above, and therefore, are rejected using the same reasoning.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kaveh Abrishamkar whose telephone number is 571-272-3786. The examiner can normally be reached on Monday thru Friday 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KA
03/18/2006

CHRISTOPHER REVAK
PRIMARY EXAMINER

CEL 3/19/06